

House Bill 420

By: Representatives Ehrhart of the 36<sup>th</sup>, Tumlin of the 38<sup>th</sup>, and Williams of the 165<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

To repeal and reenact Chapter 3 of Title 7 of the Official Code of Georgia Annotated, relating to industrial loans, so as to add protections for consumers who are customers for these loans; to provide for purposes and definitions; to provide for exemptions; to provide for powers and duties of the Industrial Loan Commissioner; to provide for licensure and fees; to provide for maintenance of books and records by licensees; to prohibit false advertising; to provide for maximum charges; to provide for penalties; to provide for suspension or revocation of license; to provide for judicial review; to provide for related matters; to provide an effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Chapter 3 of Title 7 of the Official Code of Georgia Annotated, relating to industrial loans, is amended by repealing it in its entirety and reenacting the following:

"CHAPTER 3

7-3-1.

This chapter shall be known and may be cited as the 'Georgia Industrial Loan Act of 2007.'

7-3-2.

The purpose of this chapter is to authorize and provide regulation of the business of making loans of \$3,000.00 or less and to bring within the regulation of this chapter and within its provisions all loans of \$3,000.00 or less, whether or not made by a person organized or operating under the provisions and authority of some other statute, except those persons and loans expressly exempted by the terms of this chapter. Even though authorized by other statutes of force, such loans and the persons making them, unless expressly exempted, shall

be within the operation of this chapter in accordance with its terms. In addition to the foregoing, this chapter is intended to protect the citizens of Georgia from unethical loans and practices that may cause financial ruin for the individual or his or her family.

7-3-3.

As used in this chapter, the term:

(1) 'Commissioner' means the ~~Industrial Loan Commissioner~~ commissioner of banking and finance.

(2) 'Department' means the Department of Banking and Finance.

~~(2)~~(3) 'License' means a single license issued or required under this chapter.

~~(3)~~(4) 'Licensee' means a person to whom one or more licenses under this chapter have been issued.

~~(4)~~(5) 'Loan' means any advance of money in an amount of \$3,000.00 or less under a contract requiring repayment and any and all renewals or refinancing thereof or any part thereof.

~~(5)~~(6) 'Person' means individuals, copartnerships, associations, corporations, and all other legal and commercial entities.

7-3-4.

This chapter shall apply to all persons, as defined in Code Section 7-3-3, unless expressly exempted in this chapter, engaged in the business of making loans in amounts of \$3,000.00 or less. On and after May 3, 1955, no person within the operation of this chapter shall charge, contract for, or receive, directly or indirectly, on or in connection with any loan, any interest, charges, fees, compensation, or consideration which is greater than the rates for same provided in this chapter or engage in the business of making such loans of \$3,000.00 or less without a license from the ~~Commissioner~~ commissioner as provided in this chapter. Persons engaged in the business of making loans of \$3,000.00 or less who are not exempted from the operation of this chapter may engage in such business and may make such loans lawfully under this chapter provided they comply with this chapter.

7-3-5.

A loan and brokerage transaction or any other transaction by which money is paid or agreed to be paid others by the borrower in order to obtain the loan shall be subject in all respects to this chapter, if it involves a transaction of \$3,000.00 or less and is not otherwise specifically exempted by the terms of this chapter; and the interest and money paid or agreed to be paid others by the borrower in order to obtain the loan shall not exceed the

charges authorized by this chapter, and the application of Code Section 7-4-8 is modified accordingly.

7-3-6.

This chapter shall not apply to businesses organized or operating under the authority of any law of this state or of the United States relating to banks, trust companies, real estate loan or mortgage companies, federal savings and loan associations, Georgia building and loan associations, credit unions, and ~~pawnbrokers~~ lenders licensed under Title 44 or to the transactions of such businesses, which businesses are expressly excluded from regulation under this chapter and exempted from the operation of its provisions. This chapter also shall not apply to the University System of Georgia or its educational units, to private colleges and universities in this state and associations thereof, or to student loan transactions of such educational entities, which educational entities and student loan transactions thereof are expressly excluded from regulation under this chapter and exempted from the operation of its provisions. It is expressly provided that no bank, trust company, national bank, insurance company, or real estate loan or mortgage company authorized to do business in this state shall be required to obtain a license under this chapter nor shall the University System of Georgia or its educational units or private colleges and universities in this state and associations thereof be required to obtain a license under this chapter. It is further provided that persons making loans and charging interest thereon at a rate of not more than 8 percent simple interest per annum shall not be subject to this chapter or required to obtain a license under this chapter.

7-3-7.

(a) There is created the office of Industrial Loan Commissioner; and the ~~Commissioner of Insurance~~ commissioner of banking and finance of the State of Georgia is designated and constituted the Industrial Loan Commissioner under this chapter and is invested with all of the powers and authority provided for such ~~Commissioner~~ commissioner. In addition to those powers specifically enumerated, it shall be his or her duty and authority to supervise generally and to exercise regulatory powers over the making of loans of \$3,000.00 or less in the State of Georgia by persons governed and regulated by this chapter.

(b) The ~~Commissioner~~ commissioner is granted power and authority to make all rules and regulations not inconsistent with this chapter which in his or her judgment shall be necessary and appropriate to accomplish the purposes and objectives of this chapter, including, without limitation, the power and authority to make such rules and regulations regulating and controlling the manner in which loans of \$3,000.00 or less may be made under this chapter. ~~Such rules and regulations shall be promulgated pursuant to public~~

1 ~~hearing after notice of such hearing is advertised at least once in one newspaper in Atlanta,~~  
2 ~~Georgia, having general state-wide circulation not less than ten days prior to such hearing.~~  
3 ~~In addition, such~~ Such rules and regulations shall be promulgated in accordance with  
4 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' ~~Such rules and~~  
5 ~~regulations so promulgated by the Commissioner in his discretion, consistent with the~~  
6 ~~terms of this chapter and other applicable statutes, shall have the full force and effect of~~  
7 ~~law.~~ The ~~Commissioner~~ commissioner shall have authority to designate and employ and  
8 compensate agents and employees in the manner other agents and employees are employed  
9 by ~~his~~ the department to assist him or her in the discharge of his or her duties under this  
10 chapter; and the ~~Commissioner~~ commissioner is authorized and empowered to delegate to  
11 an assistant or deputy authority to act in his or her place ~~and stand~~ in his or her absence or  
12 disability.

13 (c) The ~~Commissioner~~ commissioner is authorized to provide for training programs and  
14 seminars at such places, at such times, and in such manner as he or she shall deem  
15 advisable. Such programs and seminars shall be for the purpose of acquainting licensees  
16 and employees thereof with this chapter, with the rules and regulations promulgated  
17 thereunder, and with such other matters relative to the business authorized to be carried on  
18 by a licensee under this chapter as the ~~Commissioner~~ commissioner shall deem necessary.

19 7-3-8.

20 All persons engaged in the business of making loans of \$3,000.00 or less in the State of  
21 Georgia, unless expressly exempted therefrom, shall be required to obtain a license under  
22 this chapter. Application for license shall be made to the ~~Commissioner~~ commissioner in  
23 writing, under oath, on forms prescribed by the ~~Commissioner~~ commissioner and shall give  
24 the location from which the business is to be conducted and shall give the names of the  
25 persons connected with the business together with any other information required by the  
26 ~~Commissioner~~ commissioner. The application shall be accompanied by: ~~a fee of \$250.00~~  
27 ~~to cover the cost of investigation of the applicant and by a license fee of \$500.00 a~~  
28 corporate surety bond in a form acceptable to the department in favor of the commissioner  
29 and executed by a corporate surety authorized to transact business in this state and  
30 approved by the department in the principal sum of \$25,000.00 per location not to exceed  
31 a total of \$250,000.00; a one-time, nonrefundable investigation fee of \$500.00 per location;  
32 and an annual licensing fee of \$1,000.00 for each location. Said license shall expire on the  
33 last day of the calendar year in which granted, subject to renewal pursuant to Code Section  
34 7-3-10. The ~~Commissioner~~ commissioner shall collect fees and costs as provided in this  
35 chapter and shall issue his or her receipt for all sums collected ~~by him~~ and periodically, not

1 less than once in each quarter of each year, at such times as may be convenient, shall pay  
2 into the state treasury all sums collected ~~by him~~.

3 7-3-9.

4 (a) Upon the filing of the application and the payment of the fees provided in Code Section  
5 7-3-8, the ~~Commissioner~~ commissioner shall cause an investigation to be made.  
6 Notwithstanding any provision of Chapter 13 of Title 50, entitled the 'Georgia  
7 Administrative Procedure Act,' to the contrary, if the ~~Commissioner~~ commissioner has any  
8 doubt of the applicant meeting the standards of subsection (b) of this Code section, he or  
9 she shall issue a proposed order to be effective upon a later date without a hearing, unless  
10 any person subject to the order requests a hearing within ten days after receipt of the  
11 proposed order. Failure to make the request shall constitute a waiver of the right to a  
12 hearing pursuant to this Code section. The proposed order issued by the ~~Commissioner~~  
13 commissioner shall contain or shall be accompanied by a notice of opportunity for a  
14 hearing which shall clearly explain that the hearing must be requested within ten days of  
15 receipt of the proposed order and notice. The proposed order and notice shall be served in  
16 person by the ~~Commissioner~~ commissioner or his or her agent or by registered or certified  
17 mail or statutory overnight delivery, return receipt requested. The ~~Commissioner~~  
18 commissioner or such person as he or she designates shall hear evidence at such hearing  
19 and the hearing shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia  
20 Administrative Procedure Act.' The cost of such hearing and of recording and transcribing  
21 the evidence may, in the discretion of the ~~Commissioner~~ commissioner, be charged to the  
22 person seeking such license.

23 (b) If the ~~Commissioner~~ commissioner shall find that:

24 ~~(1) The~~ the financial responsibility, character, and general fitness of the applicant are  
25 such as to command the confidence of the public and to warrant a belief that the business  
26 will not be operated unfairly or unlawfully contrary to the purposes of this chapter; ~~and,~~

27 ~~(2) Allowing the applicant to engage in business will promote the convenience and~~  
28 ~~advantage of the community in which the licensed office is to be located;~~

29 the ~~Commissioner~~ commissioner shall grant such application and issue to the applicant a  
30 license which shall be authority to engage in the business of making loans pursuant to said  
31 license in accordance with this chapter.

32 (c) Any demand for a hearing pursuant to this Code section shall specify in what respects  
33 such person is aggrieved and the grounds to be relied upon as a basis for the relief to be  
34 demanded at the hearing. Unless postponed by mutual consent, the hearing shall be held  
35 within 30 days after receipt by the ~~Commissioner~~ commissioner of the demand for a  
36 hearing.

(d) In the event any person shall purchase substantially all the assets used in a particular office of any existing licensee, the purchaser shall file an application for license; but, if the licensee selling such assets shall surrender his or her license for such location to the ~~Commissioner~~ commissioner, the purchaser shall not be required, in order to obtain a license, to show that the convenience and advantage of the community in which the licensed office will be located will be promoted by the establishment or continuance of the proposed business of making loans.

(e) The ~~Commissioner~~ commissioner shall grant or deny an application for a license made under this chapter within 60 days from the date of the filing of such application.

7-3-10.

(a) No more than one place of business shall be maintained under the same license, but the ~~Commissioner~~ commissioner may issue more than one license to the same licensee.

(b) Each such license issued shall be conspicuously displayed in the place of business for which granted and shall remain in full force and effect until surrendered, revoked, or suspended as provided by this chapter.

(c) Every licensee shall, on or before December 20 of each year, pay to the ~~Commissioner~~ commissioner the sum of ~~\$500.00~~ \$1,000.00 for each license held by him or her as an annual license fee for the succeeding calendar year.

(d) If a licensee wishes to move his or her office within the county, he or she shall give the ~~Commissioner~~ commissioner written notice thereof, which notice shall specify the address or location to which the licensee desires to move and shall also set out, in such form as the ~~Commissioner~~ commissioner may require, facts and circumstances which it is contended will show that the removal to the new location will promote the convenience and advantage of that community. Thereafter, the ~~Commissioner~~ commissioner shall handle this request in the same manner in which he or she handles a new application under Code Section 7-3-9, insofar as that Code section is applicable.

7-3-11.

In the event a licensee does not begin the operation of business under such license within a period of 120 days from the date of the issuance of such license or in the event a licensee, after having begun the operation of business under the license, remains inactive in such business for a period of 120 days, such license shall be subject to suspension or revocation by the ~~Commissioner~~ commissioner after notice and hearing under the procedure provided in Code Section ~~7-3-24~~ 7-3-27 for the revocation or suspension of licenses. Any order or decision of the ~~Commissioner~~ commissioner on such matter shall be subject to review as provided in Code Section ~~7-3-24~~ 7-3-27.

1 7-3-12.

2 (a) Each licensee shall keep and use in his or her business sufficient books and records to  
3 enable the ~~Commissioner~~ commissioner to determine whether or not the licensee is  
4 complying with this chapter or any other ~~Act~~ law under which such licensee is operating,  
5 and such licensee shall preserve such record for at least four years after making the final  
6 entry thereon. The renewal or refinancing of a loan shall not constitute a final entry.

7 (b) The ~~Commissioner~~ commissioner may, under rules and regulations promulgated by  
8 him or her under the procedure provided in Code Section 7-3-7, require annual reports from  
9 licensees to facilitate the performance of his or her duties and to regulate effectively the  
10 making of loans under this chapter.

11 7-3-13.

12 No person shall advertise, display, distribute, or broadcast in any manner whatsoever any  
13 false, misleading, or deceptive statement or representation with regard to the rates, terms,  
14 or conditions for loans subject to this chapter.

15 7-3-14.

16 Every licensee under this chapter may loan any sum of money not exceeding \$3,000.00 for  
17 a period of 36 months and 15 days or less and may charge, contract for, collect, and receive  
18 interest and fees and may require the fulfillment of conditions on such loans as provided  
19 in this Code section:

20 (1) INTEREST. A licensee may charge, contract for, receive, and collect interest at a rate  
21 not to exceed 10 percent per annum of the face amount of the contract, whether repayable  
22 in one single payment or repayable in monthly or other periodic installments. On loan  
23 contracts repayable in 18 months or less, the interest may be discounted in advance; and,  
24 on contracts repayable over a greater period, the interest shall be added to the principal  
25 amount of the loan. On all contracts, interest or discount shall be computed  
26 proportionately on equal calendar months;

27 (2) LOAN FEE. In addition thereto, a licensee may charge, contract for, receive, or collect  
28 at the time the loan is made a fee in an amount not greater than 8 percent of the first  
29 \$600.00 of the face amount of the contract plus 4 percent of the excess; provided,  
30 however, that such fee shall not be charged or collected on that part of a loan which is  
31 used to pay or apply on a prior loan or installment of a prior loan from the same licensee  
32 to the same borrower made within the immediately preceding six-month period; provided,  
33 however, that if the loan balance is \$300.00 or less, the said period shall be two months,  
34 not six months; provided, further, that nothing contained in this paragraph and  
35 paragraph (1) of this Code section shall be construed to permit charges, interest, or fees

1 of any nature whatsoever in the aggregate in excess of the charges, interest, and fees  
2 which would constitute a violation of Code Section 7-4-18 and this chapter shall in no  
3 way affect Code Section 7-4-18. If a borrower prepays his or her entire loan to a licensee  
4 and within the following 15 days makes a new loan with that licensee and if this is done  
5 within the six-month period or the two-month period above described, as may be  
6 applicable, the fee may be charged only on the excess by which the face amount of the  
7 new contract exceeds the amount which the borrower repaid to that licensee within the  
8 said 15 day period;

9 (3) ~~INSURANCE PREMIUMS. A licensee may charge and collect from the borrower~~  
10 ~~premiums actually paid or to be paid for insurance obtained for the borrower. A licensee~~  
11 ~~may accept as security on any loan or advance made under this chapter any one or any~~  
12 ~~combination of the following:~~

13 ~~(A) Insurance on tangible property against substantial risks or loss;~~

14 ~~(B) Reasonable insurance on the life and health of the principal party; or~~

15 ~~(C) Reasonable insurance against accident of the principal party;~~

16 ~~provided, however, that any such insurance shall be reasonably related to the type and~~  
17 ~~value of the property insured and to the amount and term of the loan and shall be obtained~~  
18 ~~from an insurance company authorized to conduct such business in the State of Georgia~~  
19 ~~and at rates lawfully filed by such company with the Commissioner of Insurance and~~  
20 ~~through a regular insurance agent licensed by the Commissioner of Insurance; provided,~~  
21 ~~further, the amount of life, health, or accident insurance required as security for loans~~  
22 ~~made under this chapter shall not exceed the amount of the loan, including charges, to be~~  
23 ~~secured; and the premiums on such insurance required of the principal party obligated~~  
24 ~~shall be limited to premiums reasonably based upon reliable actuarial experience and~~  
25 ~~sound insurance practice; and the Commissioner is authorized and directed to promulgate~~  
26 ~~rules and regulations to effectuate this provision in accordance with the spirit and intent~~  
27 ~~thereof. It shall be the duty of the Commissioner from time to time under the foregoing~~  
28 ~~direction, after public hearing in the manner provided in subsection (b) of Code Section~~  
29 ~~7-3-7, to determine and promulgate the rates and maximum premiums permissible to be~~  
30 ~~charged for life, health, and accident insurance required as security for a loan made under~~  
31 ~~this chapter and to make regulations incident thereto necessary to effectuate the same;~~  
32 ~~such premiums, when thus established and as changed from time to time in the manner~~  
33 ~~aforesaid, shall be the maximum effective and permissible charges under this paragraph.~~  
34 ~~Premiums paid or to be paid pursuant to the authority of this paragraph shall not~~  
35 ~~constitute interest. The insurance company in turn may pay to the party writing the~~  
36 ~~insurance policy sold in connection with the loan a fee or commission in an amount~~  
37 ~~which is reasonable in relationship to the transaction and in no event in excess of the~~



~~amount of fee or commission customarily paid within the industry where comparable insurance is sold in a transaction not involving credit, as determined by the Commissioner. The selling of any insurance of any kind in connection with making or collecting a loan under this chapter is prohibited;~~

(4) LATE CHARGE. A licensee may not charge and collect from the borrower a late or delinquent charge ~~for of \$10.00 or an amount equal to 5¢ for each \$1.00 of any installment which is not paid within five days from the date such payment is due, whichever is greater, provided that this late or delinquent charge shall not be collected more than once for the same default~~ as scheduled; and

(5) MAINTENANCE CHARGE. ~~In addition thereto, a~~ A licensee may not contract for, charge, receive, ~~and or~~ or collect a maintenance charge ~~of \$3.00 for each month in the term of the loan contract on each loan made, whether repayable in one single payment or repayable in weekly, monthly, or other periodic installments. Refunds of unearned maintenance charges shall be made in accordance with the method prescribed in Code Section 7-3-17, and such maintenance charges will be subject to paragraph (4) of this Code section. Nothing contained in Code Section 7-4-18, as now or hereafter amended, shall be construed to apply to this paragraph; and loans made in conformity with this paragraph shall in no way constitute a violation of Code Section 7-4-18, as now or hereafter amended~~ in relation to a loan under this chapter.

7-3-15.

No licensee shall charge, contract for, or receive any other or further amount in connection with any loans authorized by this chapter in addition to those provided in Code Section 7-3-14, except the actual lawful fees paid to a public official or agency of ~~the~~ this state for filing, recording, or, on loans over \$100.00, the amount of the lawful premiums, no greater than such fees, actually paid for insurance against the risk of nonrecording or releasing any instrument securing the loan; the court costs and attorney fees authorized by law incurred in the collection of any contract in default; and the actual and reasonable expenses of repossessing, storing, and selling any collateral pledged as security for any contract in default. No licensee shall divide into separate parts any contract for the purpose or with the effect of obtaining charges in excess of those authorized by this chapter.

7-3-16.

No loan shall be made by any licensee for the purpose of paying all or any part of the amount owed on any note, bill of sale to secure debt, title retention contract, conditional sales contract, or any other similar contract which has been purchased by or assigned or

transferred to such licensee for a period of at least 90 days from the date of such purchase or transfer.

7-3-17.

Notwithstanding the provisions of any contract to the contrary, a borrower may at any time prepay all or any part of the unpaid balance to become payable under any installment contract. If the borrower pays the time balance in full before maturity, the licensee shall refund to him or her a portion of the prepaid interest, calculated in complete even months (odd days omitted), as follows: The amount of the refund shall represent at least as great a proportion of the total interest as the sum of the periodical time balance after the date of prepayment bears to the sum of all periodical time balances under the schedule of payments in the original contract. Where the amount of the refund due to anticipation of payment is less than \$1.00, no refund need be made. ~~If the borrower has been required to purchase other than insurance coverage in a blanket policy when he has paid no acquisition cost, he shall have the option to continue such insurance in force for the balance of the policy period, with all rights transferred to the borrower or his assigns, in which event no refund of insurance premiums shall be made to him.~~

7-3-18.

At the time the loan is made, each licensee under this chapter shall deliver to the borrower or, if there are two or more, to one of them a copy of the loan contract or a written itemized statement in the English language showing in clear terms the date and amount of the loan, a schedule of the payments or a description thereof, ~~the type of security for the loan, the licensee's name and address, the actual cash advanced to or on behalf of the borrower, the amount of each class of insurance carried and the premiums paid thereon,~~ and the amount of interest and fees. Each licensee shall give a receipt for every cash payment made.

7-3-19.

(a) A person licensed pursuant to this chapter shall:

(1) Display in a conspicuous location in each place of business the name and toll-free telephone number of a consumer credit counseling service organization;

(2) Post in each place of business a notice of the charges imposed for such loans; and

(3) Provide the following notice in a prominent place on each loan contract in at least 12-point boldface type: 'You have the right to rescind this contract on or before the close of the next business day following this transaction.'

(b) The loan contract or written agreement shall not contain any of the following provisions: a hold harmless clause; a confession of judgment clause; a mandatory

arbitration clause that does not comply with the standards set forth in the statement of principles of the National Consumer Dispute Advisory Committee of the American Arbitration Association in effect on July 1, 2007; any provision in which the consumer agrees not to assert a claim or defense arising out of the contract; any assignment of or order for payment of wages or other compensation for services; or any waiver by the consumer of any provision of this chapter.

(c) A borrower shall have the right to rescind, at no cost, the loan agreement on or before the close of the next business day following the transaction. In order to rescind the loan agreement, a consumer need only inform the licensee of the consumer's desire to rescind and return to the licensee the instrument that was issued to the consumer or cash in the amount equal to the amount financed.

7-3-20.

A person licensed pursuant to this chapter shall not:

(1) Require a consumer to provide security for the transaction or require the consumer to provide guaranty from another person;

(2) Allow any consumer to have multiple loans from the same licensee;

(3) Use any device, plan, or agreement, including agreements with affiliated licensees, or use any agreements with check cashers, either formal or informal, with the intent to obtain greater charges than otherwise would be authorized by this chapter. Such prohibition shall include, but not be limited to, any fee to cash a check given to a consumer by a licensee;

(4) Charge any fees not specifically authorized in this chapter;

(5) Except as specifically authorized under this chapter, use or threaten to use the criminal process available under Code Section 16-9-20 to collect on a loan contract or any civil process to collect the payment on a loan contract not generally available to creditors to collect on consumer loans in default;

(6) Allow a consumer to renew or refinance a loan agreement by paying only an additional fee to extend the due date of the existing agreement or contract; or

(7) Knowingly offer or provide a loan or cash advance of any kind to an active duty member of the United States military or his or her dependents.

7-3-21.

(a) A licensee must provide a consumer written notice of the borrower's right to request a repayment plan according to subsection (b) of this Code section. The form of such written notice shall be either prescribed or approved by the department and such notice shall be set forth conspicuously both at the point of sale and in every loan agreement.

1 (b) If a borrower is unable to pay any installment on the due date or the full amount owing  
2 at the end of the term under a loan agreement or contract with a licensee, then the borrower  
3 shall have the right to request in writing from such licensee a mandatory repayment plan  
4 for that installment or amount owing. The licensee shall be required to provide to such  
5 borrower such a repayment plan, subject to the terms and conditions set forth below. A  
6 borrower who has requested a repayment plan may repay the amount owed according to  
7 the following terms:

8 (1) The borrower must request the repayment plan, in writing, on or before the due date  
9 of the installment or amount owed;

10 (2) The borrower shall agree not to enter into any additional loan contracts during or for  
11 seven days following the payment plan term with any other licensee;

12 (3) The borrower shall be allowed to repay the transaction in no more than four equal  
13 installments with one installment due on each of the borrower's next four pay dates;

14 (4) All other installments due under the contract shall be deferred during the term of the  
15 repayment plan and the remaining installments rescheduled accordingly; and

16 (5) The licensee shall not charge a borrower any additional fee for utilizing the  
17 mandatory repayment plan.

18 ~~7-3-19~~ 7-3-22.

19 (a) In addition to all other taxes, fees, license fees, or other charges now or hereafter levied  
20 or assessed, there is levied a tax of 3 percent on the total amount of interest on any loan  
21 collected by any person licensed under this chapter from any borrower to whom such  
22 licensee has made a loan.

23 (b) Said tax is levied and assessed against the person so licensed and shall be paid by such  
24 person and shall not be added in any manner as an additional fee or charge against the  
25 borrower. Any person licensed under this chapter who adds such tax in any manner as an  
26 additional fee or charge against the borrower shall be liable for the recovery of triple the  
27 amount of such charge by action against the lender in any court of competent jurisdiction.

28 (c) As used in this Code section, the term 'interest collected' means the gross amount of  
29 interest charged and collected on loan contracts, less any amount of unearned interest  
30 refunded to borrowers and such interest on such portion of uncollectable accounts that are  
31 charged off as bad debts by the licensee; except that, for those licensees whose records are  
32 kept on an accrual basis, the 3 percent tax levied in subsection (a) of this Code section shall  
33 be remitted on such portion of the interest as accrues during the taxable month.

~~7-3-20~~ 7-3-23.

The tax provided for in Code Section ~~7-3-19~~ 7-3-22 shall be remitted to the ~~Commissioner~~ commissioner on or before the twentieth day of each month for the preceding calendar month. The ~~Commissioner~~ commissioner and his or her authorized agents and employees shall have the right to inspect all records of any person so licensed, and the ~~Commissioner~~ commissioner is authorized to promulgate rules and regulations relative to the enforcement of Code Section ~~7-3-19~~ 7-3-22, this Code section, and Code Section ~~7-3-21~~ 7-3-24.

~~7-3-21~~ 7-3-24.

In the event any person fails or refuses to remit the tax required by Code Sections ~~7-3-19~~ and 7-3-20 7-3-22 and 7-3-23 within the time prescribed, there shall be added to the tax a penalty equivalent to 25 percent of the tax but in no case shall the penalty so added be less than \$5.00. In the event any person fraudulently remits the incorrect tax, there shall be added to the tax a penalty equivalent to 50 percent of the tax but in no case shall the penalty so added be less than \$5.00. The amounts so added as penalties shall be collected as a part of the tax.

~~7-3-22~~ 7-3-25.

(a) For the purpose of discovering violations of this chapter, the ~~Commissioner~~ commissioner or his or her duly authorized representative may from time to time examine the books, accounts, papers, and records of:

(1) Any licensee;

(2) Any person who advertises for, solicits, or holds himself or herself out as willing to make loans in amounts of \$3,000.00 or less; or

(3) Any person whom the ~~Commissioner~~ commissioner has reason to believe is violating or is about to violate the provisions of this chapter.

(b) The ~~Commissioner~~ commissioner may subpoena witnesses, books, accounts, papers, and records; administer oaths; hold hearings; and take testimony under oath in conducting examinations and hearings authorized under this chapter.

(c) The cost of any such examination, investigation, or hearing, in the discretion of the ~~Commissioner~~ commissioner, may be charged to the licensee or person examined subject to review by the superior court under Code Section ~~7-3-27~~ 7-3-30. The examinations, investigations, or hearings provided for in this Code section may be conducted at the state capitol or, in the discretion of the ~~Commissioner~~ commissioner, in the county wherein the business of the licensee is located or where the person required to have a license under this chapter is engaging in the business of making loans or elsewhere, upon the consent of the parties involved.

1 ~~7-3-23~~ 7-3-26.

2 In the event the ~~Commissioner~~ commissioner shall find cause to believe that any person is  
3 violating this chapter or the rules and regulations promulgated by the ~~Commissioner~~  
4 commissioner pursuant to this chapter, ~~he~~ the commissioner shall make such investigation  
5 and have such hearings, before him or her or such person as he or she designates, as will  
6 permit him or her to determine the facts and then may issue a cease and desist order if he  
7 or she so determines. If such cease and desist order is thereafter violated by the person  
8 against whom it is issued, such violation shall constitute a public nuisance; and the  
9 ~~Commissioner~~ commissioner is authorized to seek, and the superior courts shall grant,  
10 injunctions against such person's further violating this chapter or the lawful rules and  
11 regulations promulgated by the ~~Commissioner~~ commissioner pursuant to this chapter. Such  
12 action for injunction may be maintained notwithstanding the existence of other legal  
13 remedies or the pendency or successful completion of a criminal prosecution as for a  
14 misdemeanor.

15 ~~7-3-24~~ 7-3-27.

16 (a) The ~~Commissioner~~ commissioner, upon ten days' written notice in the form of a show  
17 cause order to the licensee stating his or her contemplated action and in general the ground  
18 therefor and after giving the licensee a reasonable opportunity to be heard, subject to the  
19 right to review provided in Code Section ~~7-3-27~~ 7-3-30, may by order in writing suspend  
20 or revoke any license issued under this chapter if the ~~Commissioner~~ commissioner shall  
21 find that:

22 (1) The licensee has failed to pay the annual license fee or any fee required under this  
23 chapter; or

24 (2) The licensee has violated any provision of this chapter or any rule or regulation  
25 promulgated by the ~~Commissioner~~ commissioner under this chapter or has violated the  
26 terms of any cease or desist order entered by the ~~Commissioner~~ commissioner under  
27 Code Section ~~7-3-23~~ 7-3-26.

28 (b) Any such suspension or revocation shall not become final pending and subject to the  
29 right of review provided in Code Section ~~7-3-27~~ 7-3-30, but the court shall have and is  
30 granted power to enter such order as justice shall require pending hearing of such appeal.  
31 The court upon such appeal may tax the cost, including the cost of the hearing before the  
32 ~~Commissioner~~ commissioner, against the losing party.

33 (c) No suspension, revocation, relinquishment, or expiration of any license shall invalidate,  
34 impair, or affect the legality or obligations of any preexisting contracts or prevent the  
35 enforcement and collection thereof.

~~7-3-25~~ 7-3-28.

(a) Any license shall be subject to suspension or revocation, after notice and hearing as provided for in Code Section ~~7-3-24~~ 7-3-27, in the event unreasonable collection tactics shall be willfully used by the licensee or any employee or agent thereof. Unreasonable collection tactics shall include, but not be limited to, any conduct by the licensee or any employee or agent thereof which:

(1) Causes the borrower or any member of his or her family to suffer bodily injury or physical harm;

(2) Constitutes a willful or intentional trespass by force of the borrower's home or his or her personal property without process of law;

(3) Holds up the borrower to public ridicule or unreasonably degrades him or her in the presence of his or her neighbors or business associates;

(4) Involves use of printed material which simulates or resembles a summons, warrant, or other legal process; or

(5) Although otherwise lawful, occurs at an unreasonable hour of the night. Attempts to make collections by means of personal visits, telephone calls, and the like shall be deemed to occur at an unreasonable hour of the night if they occur between the hours of 10:00 P.M. and 5:00 A.M.

(b) Any order or decision of the ~~Commissioner~~ commissioner on the matter of suspension or revocation shall be subject to review as provided for in Code Section ~~7-3-27~~ 7-3-30.

~~7-3-26~~ 7-3-29.

In addition to all other penalties provided for under this chapter, the ~~Commissioner~~ commissioner shall have authority to place any licensee on probation for a period of time not to exceed one year for each and every act or violation of this chapter or of the rules and regulations of the ~~Commissioner~~ commissioner and may subject such licensee to a monetary penalty of up to \$1,000.00 for each and every act or violation of this chapter or of the rules and regulations of the ~~Commissioner~~ commissioner. If the licensee knew or reasonably should have known he or she was in violation of this chapter or the rules and regulations of the ~~Commissioner~~ commissioner, the monetary penalty provided for in this Code section may be increased to an amount up to \$5,000.00 for each and every act or violation.

~~7-3-27~~ 7-3-30.

The decision of the ~~Commissioner~~ commissioner in granting or refusing to grant a license and in revoking or suspending such license and in any other order or decision authorized in this chapter shall be final, conclusive, and binding as to all determinations of fact made

by him or her; but any applicant or licensee who deems himself or herself aggrieved may have such decision reviewed under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' for the review of contested cases.

~~7-3-28~~ 7-3-31.

Nothing in this chapter shall be construed as repealing Code Section 7-4-4.

~~7-3-29~~ 7-3-32.

(a) Any person who shall make loans under this chapter without first obtaining a license or who shall make a false statement under oath in an application for a license under this chapter or who shall do business while the license of such person under this chapter is suspended or revoked shall be guilty of a misdemeanor; and any contract made under this chapter by such person shall be null and void.

(b) Except as otherwise provided in this chapter, any duly licensed lender who fails to comply with this chapter in connection with a loan under this chapter shall be liable to the borrower or borrowers thereon for a single penalty in an amount equal to twice the amount of all interest and loan fees charged said borrower or borrowers on the most recent loan made by the lender to said borrower or borrowers; provided, however, that the liability under this subsection shall not be less than \$100.00.

(c) A lender duly licensed under this chapter has no liability under subsection (b) of this Code section if, within 15 days after discovering an error or violation and prior to the institution of an action under this Code section or the receipt of written notice of the error or violation, the lender notifies the person concerned of the error or violation and makes whatever adjustments in the appropriate account are necessary to ensure that such person will not be required to pay charges in excess of those permitted by this chapter.

(d) A lender may not be held liable in any action brought under this Code section for a violation of this chapter if the lender shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide clerical or typographical error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

(e) A claim of violation of this chapter against a duly licensed lender may be asserted in an individual action only and may not be the subject of a class action under Code Section 9-11-23 or any other provision of law. A claim of violation of this chapter against an unlicensed lender may be asserted in a class action under Code Section 9-11-23 or any other provision of law.

(f) If a contract is made in good faith in conformity with an interpretation of this chapter by the appellate courts of this state or in a rule or regulation officially promulgated by the ~~Commissioner~~ commissioner after public hearings, no provision in this Code section



1 imposing any penalty shall apply, notwithstanding that, after such contract is made, such  
2 rule or regulation is amended, rescinded, or determined by judicial or other authority to be  
3 invalid for any reason.

4 (g) Any lender duly licensed under this chapter who shall knowingly and willfully with  
5 intent to defraud a borrower make a contract in violation of this chapter shall be guilty of  
6 a misdemeanor, and the contract so made shall be null and void.

7 (h) No person may, more than one year after April 9, 1980, assert or contend offensively  
8 or defensively in any court that a contract predating April 9, 1980, is null and void or is  
9 illegal, void, invalid, or not good consideration for a renewal or refinanced contract. This  
10 subsection is a statute of repose and limitation, barring such remedies, and only such  
11 remedies, as of that date; provided, however, that after that date a borrower or borrowers  
12 on a contract predating April 9, 1980, shall be entitled to the appropriate penalty provided  
13 under subsections (a) through (g) of this Code section, but such right to said penalty shall  
14 not in any way adversely affect the validity of any renewal or refinanced contract."

## 15 **SECTION 2.**

16 This Act shall become effective on July 1, 2007, and apply to all loans executed on or after  
17 that date.

## 18 **SECTION 3.**

19 All laws and parts of laws in conflict with this Act are repealed.